

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 891 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MOCHINAGAR CO-OPERATIVE HOUSING SOCIETY LIMITED

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATY for Petitioner
MS HANSA B PUNANI for Respondent No. 1,2
MR HS MUNSHAW for Respondent No. 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/02/2000

ORAL JUDGEMENT

1. Heard the learned counsel for the parties. Both the courts declined to grant temporary injunction as prayed for by the plaintiff- petitioner. Hence, this revision application before this court.

2. The facts of the case are that the plaintiff petitioner filed a regular civil suit NO. 1980 of 1996 in the court of Civil Judge (S.D.), Rajkot which was subsequently transferred to the court of 9th Jt. Civil Judge (S.D.), Rajkot. The petitioner a registered Cooperative Society owns the land of Survey No. 207 of village Raiya. This land was divided in plots. The plots have been allotted to the members of the Society. The lay out plan of Survey No. 207 has been sanctioned by the respondent No.5 and as per the lay out plan, there is a way of 24 meters in eastern side of the plots and sub plots of Survey No. 207. Survey No. 207 has been included in town planning scheme NO. 6 by the respondent No.4. It is the grievance of the petitioner that the land of above 24 mts. way has been encroached upon by the Airport Authority along with the other land of the petitioner - Society. The Airport Authority has constructed a wall on the above land. The plaintiff petitioner made a representation before the respondents for removing the encroachment from the land but the respondents instead of doing so have shown another way in the preliminary scheme and above way has been shown in the land of the petitioner - Society. That has been challenged by filing a suit.

3. The contention raised by the learned counsel for the petitioner is that the members of the Society were not heard before modifying the scheme.

4. Learned counsel for the respondents strongly opposed this revision application.

5. I do not find any merits in this contention for three reasons. Firstly, both the courts have concurrently considered it not a fit case to grant temporary injunction. Grant of temporary injunction is a discretionary relief and in the facts of this case, if both the courts have concurrently held against the plaintiff - petitioner and more so when in the orders passed by the courts below there is no perversity, no interference in the revision application can be made by this court under sec. 115, C.P.C..

6. Secondly, learned counsel for the petitioner does not dispute that the petitioner - Society was given the notice. When the society was given the notice, I fail to see any justification in the contention raised by its counsel in this revision application. None of the plot holders have made this grievance. The society to whom the opportunity of hearing is given is making this contention and at its instance, it cannot be entertained.

Lastly, the Airport Authority of India at Rajkot is not impleaded as a party to the suit. If whatever contention raised and averments made are decided behind the back of that authority, it will adversely affect it. Lastly, in this scheme the ways are to be provided and in case it is provided through the land of the petitioner - Society then also it is a public purpose in which ordinarily such type of objections should not be raised by a cooperative Society.

7. In the result, this revision application fails and the same is dismissed with costs. Rule discharged. The petitioner is directed to pay Rs.500/= as costs of this revision application to the State of Gujarat and Rs.500/= as costs to the respondent NO.5.

zgs/-